Sanitation Salvage Corporation *and* Local 813, International Brotherhood of Teamsters, AFL–CIO. Case 2–CA–35481–1

July 12, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On March 8, 2004, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party filed an answering brief. The General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified.[2]

Background

The issue presented in this case is whether the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to sign a contract submitted to it by the Union for execution. Section 8(d) of the Act requires the parties to a collective-bargaining relationship, once they have reached agreement on the terms of a collective-bargaining agreement, to execute that agreement at the request of either party. *Hempstead Park Nursing Home*, 341 NLRB No. 41, slip op. at 2 (2004) (citing *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941)). A failure to do so constitutes a violation of Section 8(a)(5).

The judge found that the Respondent and the Union reached an agreement binding the Respondent to the terms and conditions of a collective-bargaining agreement to be negotiated between the Union and one of the two major companies in the waste disposal industry in New York City.[3] This type of agreement is commonly referred to as a "me-too" agreement. The me-too agreement obligated the Respondent to sign and be bound by the collective-bargaining agreement that would be reached between the Union and employer A or B. Subsequently, the Union reached agreements with employers A and B. The Union then tendered the "A" contract to the Respondent. The Respondent refused to sign the agreement. The judge found that this refusal violated Section 8(a)(5) and (1) of the Act.

The Respondent defends, on two grounds, its refusal to execute the collective-bargaining agreement with the Union. First, the Respondent argues that no authorized agent ever signed the me-too agreement on the Respondent's behalf. Second, the Respondent contends that, even if the Respondent did sign the me-too agreement, the terms of that agreement were so ambiguous as to render it unenforceable.

We find, as explained below, that there was authorization to reach a me-too agreement, and an agreement was reached. Further, although its terms may have been ambiguous, extrinsic evidence in the record clarifies the ambiguity. More specifically, the evidence shows that the parties agreed to adopt the Union's choice of either of the collective-bargaining agreements negotiated between the Union and employers A or B. The Union presented its choice of collective-bargaining agreement to the Respondent, which the Respondent refused to sign. We find that, by so refusing, the Respondent violated Section 8(a)(5) and (1).

Facts

The judge has fully set out the facts. In brief, the Respondent is a waste disposal services company that employs 15 employees and has had a bargaining relationship with the Union since the early 1980s. Steven Squiteri and his mother, Theresa, each own 50 percent of the company. Steven is the Respondent's president and Theresa is its vice president and secretary. The Respondent employs Steven's brother, John Squiteri, who served as its operations manager until March 1, 2003.

As operations manager, John Squiteri was responsible for the Respondent's daily operations. He also dealt with the Union on many issues, including employee grievances, pension fund contribution delinquencies, and remittance of union dues. He also personally handled a prior case involving an unfair labor practice charge filed by the Union. In that case, John sent a letter to the Board stating that the Union should send a collective-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language, and in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001); and we shall substitute a new notice.

[3] The two companies are Waste Management of New York and Allied Waste Industries. They are referred to herein as employers A and B, respectively.

bargaining agreement to his office for signing. Apparently, the case was resolved on this basis. In another matter in 2001, John sent a letter to the Union agreeing on the Respondent's behalf to increase fund contributions. Also, John sometimes signed employees' paychecks. On one occasion, the Union asked John to allow the Respondent's employees to honor a picket line at another employer's premises. John granted the Union's request.

The Respondent and the Union have been bound to a series of collective-bargaining agreements. The Respondent has never negotiated its own contract. Instead, it has always signed me-too agreements, binding it to collective-bargaining agreements negotiated by the Union and other industry employers. The most recent collective-bargaining agreement to which the Union and Respondent were bound expired on July 31, 2002.

After the collective-bargaining agreement expired on July 31, 2002, Union Agent Sean Campbell telephoned John Squiteri and asked whether the Respondent intended to negotiate an individual contract or sign another me-too agreement. John replied that the Respondent was interested in signing a me-too agreement. Several days later, Campbell personally delivered a 1–page me-too agreement to the Respondent's office.[4] John Squiteri told Campbell that he would review the me-too agreement and speak with Steven Squiteri about it. The me-too agreement provided:

> The undersigned Employer hereby agrees to extend its current collective bargaining agreement with Local 813, IBT from December 1, 1999 through July 31, 2002.
>
> The undersigned Employer agrees to accept and adopt all terms and conditions contained in any successor collective bargaining agreement (replacing the agreement which expires July 31, 2002) negotiated between Local 813, IBT and Waste Management of New York or Allied Waste Industries, Inc. d/b/a Waste Services of NY, Inc., covering employees in the private sanitation industry in New York City once that successor agreement is negotiated.

In early September 2002**,** John Squiteri telephoned Campbell and informed him that Steven Squiteri had executed the me-too agreement. Campbell picked up the signed agreement several days later. The me-too agreement bears the purported signature of Steven Squiteri, written above his pre-printed name and title. However, as found by the judge, John signed Steven's name. Union Agent Campbell testified that, when he picked up the signed me-too agreement, he saw that the Respondent had not struck the name of one of the collective-bargaining agreements. Campbell testified further that he noted this fact to John Squiteri and told him that the Union would probably choose to give the Respondent the Waste Management agreement. According to Campbell, John Squiteri replied that he did not care because he heard the contracts were similar. (Tr. at 58–59.)

On October 30, 2002, the Union entered into a collective-bargaining agreement with employer A. This collective-bargaining agreement was one of the two successor agreements expressly referenced in the me-too agreement.[5]

In January 2003,[6] Steven Squiteri asked Union Agent Sylvester Needham for the "new agreement," without specifying which agreement. In February, Steven telephoned Campbell and informed Campbell that he had replaced John Squiteri as operations manager and asked about the status of the new agreement. Again, Steven neither specified which agreement he was referencing nor asked Campbell which collective-bargaining agreement the Union wanted. Campbell replied that the new agreement would be ready within a few weeks.

Steven Squiteri called Campbell again in March and asked about the new agreement. Campbell assured him that the new agreement would be ready soon. Campbell also brought up the subject of several employees' grievances. Steven Squiteri and Campbell agreed to meet on April 1.

On April 1, Campbell presented two copies of a collective-bargaining agreement to Steven Squiteri for signature. The agreement contained the terms of the October 2002 employer A agreement. In response, Steven mentioned that there were several outstanding grievances and refused to sign the agreement.

At the April 1 meeting, Steven did not state that his refusal to sign the proffered agreement was based on the choice between the two agreements, or that the employer A agreement was the wrong agreement. Nor did Steven state that he was not obligated to sign the agreement because he had not signed the me-too agreement. Rather,

[4] Union Agent Campbell testified that, when he dropped off the me-too agreement, he told John Squiteri that the Respondent had the option of choosing between the Waste Management Agreement and the Waste Services Agreement by striking from the me-too agreement the name of the collective-bargaining agreement that the Respondent did not want. The judge made no express credibility finding regarding this specific testimony. The judge did find, however, that "Campbell's version of the events [i.e., the drop-off meeting] was very credible and he had a specific recollection of his discussions with John Squiteri." There is no credited testimony specifically refuting Campbell's testimony.

[5] The other referenced successor agreement, between the Union and employer B, was not entered into until June 5, 2003.

[6] All dates hereafter are in 2003 unless otherwise designated.

as found by the judge, Steven's refusal to sign the proffered agreement resulted from his irritation over the pending grievances.

The parties met again on May 5. Steven Squiteri again refused to sign the Union's April 1 contract containing the terms of the employer A agreement. For the first time, Steven denied ever signing the me-too agreement and said that it was a forgery. The Respondent's attorney then advised the Union that the matter could be resolved if the Union gave the Respondent some relief on a wage rate for helpers. The Union declined to negotiate.

Analysis

We agree with the judge that the Respondent and the Union reached an agreement binding the parties to a collective-bargaining agreement. The judge found, and we agree, that John Squiteri had apparent authority to bind the Respondent to the me-too agreement. "Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question." *Southern Bag Corp.*, 315 NLRB 725, 725 (1994). Such manifestation of authority occurred here.

John is the brother and son, respectively, of the Respondent's two coowners. The Respondent employed John as its operations manager. The Respondent entrusted John with the responsibility of running its day-to-day operations and held John out as its primary representative in dealings with the Union. John dealt with the Union on the Respondent's behalf on many occasions over the years. As previously set forth, John frequently represented the Respondent in resolving union grievances. John also dealt with the Union on other matters of contract administration, including the following: he wrote to the Union, memorializing an agreement to increase the Respondent's contributions to various union funds; he wrote the Board's Regional Office—in an unfair labor practice investigation—stating that the Union was to bring the agreement to *his* office for signing; and he granted the Union's request to honor a picket line at another employer's premises. By giving John the responsibility to handle the above matters with the Union, the Respondent caused the Union to reasonably believe that John had authority to enter into a collective-bargaining agreement on its behalf.[7]

John exercised this authority in early September 2002, when he telephoned Union Agent Campbell and informed him that Steven had executed the me-too agreement, thereby creating a binding agreement between the Respondent and the Union, and a legal obligation for the Respondent to sign the agreement.[8] Therefore, we need not address whether John also had apparent authority to sign Steven's name, because regardless of such authority there was a binding contract between the Respondent and the Union, and a refusal to sign would have been a violation of Section 8(a)(5). Since the absence of a signature would not have negated the agreement, we believe that a false signature would similarly not negate the agreement. The essential point is that there was an agreement.[9]

We also find that Steven Squiteri, who undisputedly had actual authority to enter into an agreement on the Respondent's behalf, ratified the agreement. Ratification is "the affirmance by a person of a prior act that did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *Service Employees International Union Local 87 (West Bay Building Maintenance)*, 291 NLRB 82, 83 (1988).

The judge specifically found that Steven was aware that a me-too agreement had been reached by John and the Union. He called the Union on three occasions in early 2003 to ask when the Respondent would receive its collective-bargaining agreement. Far from repudiating John's conduct, Steven Squiteri's actions during these conversations recognized the agreement. Thus, Steven's conduct indicated that he had ratified John's conduct. Accordingly, the Respondent is bound to the terms of the me-too agreement. Cf. *A.B.C. Drywall Co.*, 221 NLRB 238 (1975) (employer's president ratified conduct of his brother, who had affixed president's signature to collective-bargaining agreement, by failing to repudiate contract after learning of his brother's actions and by applying agreement's terms).

Concededly, the me-too agreement may have been ambiguous. As noted above, the me-too agreement provides that the Respondent "agrees to accept and adopt all terms and conditions contained in any successor collective bargaining agreement . . . negotiated between [the Union] and [employer A] or [employer B]." Thus, the me-too agreement obligates the Respondent to adopt any successor agreement negotiated between the Union and

[7] See *301 Holding, LLC*, 340 NLRB No. 55, slip op. at 4–5 (2003) (agent had apparent authority to sign form adopting association agreement because employer had repeatedly sent agent to represent employer in its dealings with union); *Builders, Woodworkers, & Millwrights Local (Glens Falls Contractors Assn.)*, 341 NLRB No. 54, slip op. at 5 (2004) (employer's designated negotiator had apparent authority to reach collective-bargaining agreement with union).

[8] *H.J. Heinz Co.*, 311 U.S. at 523–526.

[9] See *Ben Franklin National Bank*, 278 NLRB 986 (1986) (employer had statutory duty to execute agreement where its president, with apparent authority, implied to union that employer's board of directors had approved offer, which was a condition of contract formation, even though board of directors had never approved offer).

employer A or employer B. It does not, however, clearly establish a method for identifying which of the agreements must be adopted. Nor does the me-too agreement explicitly grant to the Union the option of choosing between the agreements. Instead, the language of the me-too agreement is ambiguous as to which party can decide which agreement will be applied.

Although the me-too agreement may be ambiguous, it is not unenforceable. Under established rules of contract interpretation, if the wording of a provision is ambiguous —that is, unclear, or susceptible of more than one interpretation—the Board can turn to extrinsic evidence. *Des Moines Register & Tribune Co.*, 339 NLRB No. 130, slip op. at 3 (2003). The extrinsic evidence in this case supports a finding that the Respondent gave the option of choosing between agreements to the Union. Union Agent Campbell testified that, when he dropped off the me-too agreement, he told John Squiteri that the Respondent had the right to choose between the Waste Management agreement and the Waste Services agreement. Campbell testified further that, when he picked up the signed agreement, he remarked to John Squiteri that the Respondent had failed to strike the name of the undesired agreement and, consequently, that *the Union* would probably choose to give the Respondent the Waste Management agreement. Campbell testified that John Squiteri responded that "he didn't care" if the Union chose the Waste Management agreement because he had heard that there would not be much difference between the two.[10]

Additional light is shed on the parties' understanding of the me-too agreement by Steven Squiteri's conduct. On April 1, when the Union presented the Waste Management agreement, Steven did not respond by stating that the Respondent, not the Union, had the right to choose between agreements. Instead, Steven responded by mentioning several outstanding grievances before announcing his refusal to sign. Steven Squiteri's failure to assert that the Respondent had the right to choose between collective-bargaining agreements shows that the parties understood that it was the Union's choice. Based on the above extrinsic evidence, we find that the me-too agreement has been sufficiently clarified to be enforced.

In sum, the Respondent bound itself to the me-too agreement, and the me-too agreement is sufficiently definite, in light of extrinsic evidence, to constitute an enforceable contract. The me-too agreement obligated the Respondent to adopt the Union's choice of two collective-bargaining agreements. Consequently, the Respondent violated Section 8(a)(5) and (1) when it refused to sign the collective-bargaining agreement presented by the Union on April 1, and again on May 5.

[10] The judge neither credited nor discredited Campbell's testimony on this specific point. However, the judge did find that Campbell was "very credible" regarding his account of the meetings where he dropped off and picked up the me-too agreement. Further, there is no credited record evidence contradicting Campbell's testimony. Accordingly, we rely on it. See *R & H Coal Co.*, 309 NLRB 28 fn. 2 (1992), enfd. mem. 16 F.3d 410 (4th Cir. 1994); *Globe Gear Co.*, 189 NLRB 422 fn. 2 (1971), enfd. 451 F.2d 1348 (6th Cir. 1971).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sanitation Salvage Corporation, Bronx, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a) and reletter the succeeding paragraphs accordingly.

"(a) Execute the collective-bargaining agreement delivered to the Respondent on April 1, 2003, incorporating all of the provisions contained in the collective-bargaining agreement entered into between Local 813, International Brotherhood of Teamsters, AFL–CIO and Waste Management of New York on October 30, 2002.

"(b) Make employees whole, with interest, for any losses they may have suffered as a result of the Respondent's refusal to execute the agreement specified in the preceding paragraph, in the manner set forth in the Remedy section of the judge's decision."

2. Substitute the following for paragraph 2(b).

"(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. July 12, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to execute the collective-bargaining agreement delivered to us on April 1, 2003, incorporating all of the provisions contained in the collective-bargaining agreement entered into between Local 813, International Brotherhood of Teamsters, AFL–CIO and Waste Management of New York on October 30, 2002.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL execute the collective-bargaining agreement delivered to us on April 1, 2003, and WE WILL give effect to all of the provisions contained in that agreement, retroactive to August 1, 2002.

WE WILL make you whole, with interest, for any losses you may have suffered as a result of our refusal to execute the agreement.

SANITATION SALVAGE CORPORATION

Simon-Jon H. Koike, Esq., for the General Counsel.
Denise A. Forte, Esq., of White Plains, New York, for the Respondent.
Michael S. Lieber, Esq., of Long Island City, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in New York City, New York, on October 8–9, 2003. The charge was filed May 7, 2003, and the complaint was issued June 27, 2003. The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act) by failing to sign the agreement reached by it and the Union that represents its employees. The Respondent filed an answer denying the essential allegations in the complaint.

On September 12, 2002, the Respondent and Local 813, International Brotherhood of Teamsters, AFL–CIO (Union) allegedly executed an agreement binding the Respondent to the terms and conditions of a successor collective-bargaining agreement to be negotiated between the Union and one of the two major companies in the waste disposal industry in the New York City metropolitan area, Waste Management of New York (Waste Management) and Allied Waste Industries, Inc. d/b/a Waste Services of New York, Inc. (Waste Services).[1] That type of agreement is commonly referred to in collective-bargaining parlance as a "me-too" agreement. The Union entered into an agreement with Waste Management on October 30, 2002 (Waste Management Agreement), and a separate agreement with Waste Services on June 5, 2003.[2] On April 1, 2003, the Union delivered a collective-bargaining agreement (new contract) reflecting the terms and conditions of the Waste Management Agreement to the Respondent for execution.[3] However, the Respondent has refused to sign the new contract.

The Respondent contends that it never signed the me-too agreement on September 12, 2002, or any other date. It denies that the me-too agreement was signed by its president, Steven Squiteri, or anyone authorized to sign on his behalf. The Respondent further contends that, even if it is determined that it executed the me-too agreement, that agreement was legally defective because it was patently ambiguous by purporting to bind the Respondent to either of two agreements.

The principle issues in determining whether the Respondent violated Section 8(a)(5) and (1) of the Act are (1) whether the Respondent executed the me-too agreement, and (2) if so, whether the terms and conditions of the me-too agreement constituted a meeting of the minds between the Union and the Respondent. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, operates a facility in Bronx County, New York, and provides waste disposal services to commercial establishments in New York City and Westchester County, New York, where it annually provides services valued in excess of $50,000 to entities located within the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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[1] GC Exh. 4.

[2] GC Exhs. 5, 8.

[3] The agreements have different provisions with respect to their effective dates, rates, and structures of wage increases, seniority classifications, effective dates for classification of wages, differences in scheduled work days, leave benefits, conditions permitting wage reductions, the length of trial periods, employer's pension contributions, and arbitration procedures.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operation and Management Structure

The Respondent, a family-owned company, operates a waste disposal services company in Bronx County, New York, and employs approximately 15 people. It is jointly owned by Steven Squiteri and his mother, Theresa Squiteri. Steven Squiteri is the president and Theresa Squiteri is the vice president/secretary. Other family members involved in the business include Steven Squiteri's brothers, John Squiteri and Andrew Squiteri, and his nephew, Joseph Constantino. John Squiteri was neither a shareholder nor a corporate officer of the Respondent. However, he served as the Respondent's operations manager and was responsible for the Respondent's daily operations until March 1, 2003, when he was succeeded as operations manager by Steven Squiteri. During his tenure as operations manager, John Squiteri was authorized to sign checks and correspondence on behalf of the Respondent.[4] He also dealt with the Union regarding grievances and delinquencies in fund payments, resolving unfair labor practice charges, and arranging for the execution of collective-bargaining agreements.[5] John Squiteri was under no obligation to consult with Steven Squiteri regarding the filing or resolution of unfair labor practice charges.[6]

B. History of the Collective-Bargaining Relationship

The Respondent has had a collective-bargaining relationship with the Union since the early 1980's. The most recently expired collective-bargaining agreement indicated, in pertinent part, that the Respondent's employees constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.[7] Although there is no corporate document stating who has the authority to bind the Respondent to a collective-bargaining agreement, Steven Squiteri and Theresa Squiteri are the only individuals who have signed such agreements on behalf of the Respondent. The most recently expired collective-bargaining agreement, covering the period of December 1, 1999, to July 31, 2002, was signed by Theresa Squiteri. It described the collective-bargaining unit as follows:

> The Employer recognizes the Union as the sole and exclusive bargaining representative of all Chauffeurs, Helpers, Mechanics and Welders of the Employer, except those Employees not eligible for membership in the Union in accordance with the provisions of the Labor Management Relations Act of 1947, as amended, with respect to wages, hours and other working conditions. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products.[8]

During the entire time that Steven Squiteri has been president, the Respondent has never actually negotiated a collective-bargaining agreement with the Union. Instead, the Respondent has always signed me-too agreements binding it to collective-bargaining agreements incorporating the terms and conditions of the Union's collective-bargaining agreements with other companies in the waste services industry.

Sean Campbell, the Union's recording secretary and business agent, has been the union representative responsible for dealing with the Respondent since August 2001. In this capacity, he spoke with John Squiteri seven or eight times between August 2001 and February 2003 about various matters, including labor grievances and union dues. On one occasion, he asked John Squiteri to have the Respondent honor another union local's picket line. John Squiteri agreed, and the Respondent acquiesced to that request. Campbell never spoke with Steven Squiteri during this period.

C. The 2002–2003 Negotiations for a New Contract

In August 2002, after the 1999 contract expired, Campbell asked John Squiteri whether the Respondent wanted to negotiate a new collective-bargaining agreement or enter into a me-too agreement. John Squiteri expressed an interest in entering into a me-too agreement and Campbell personally delivered the proposed me-too agreement to John Squiteri at the Respondent's office several days later. John Squiteri stated that he would review the me-too agreement and speak with Steven Squiteri about it. In early September 2002, John Squiteri called Campbell and informed him that Steven Squiteri had executed the me-too agreement. Campbell picked up the me-too agreement several days later. [9] The me-too agreement contained the purported signature of Steven Squiteri, since his name was printed in the space below, followed by his title of president and the date, September 9, 2002.[10] However, the document was actually signed by John Squiteri.[11] The me-too agreement stated that

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[4] John Squiteri used different handwriting styles. His signature was scribbled and illegible on GC Exh. 10, but was signed in a vastly more legible style on GC Exh. 14. In addition, John Squiteri admitted signing Steven Squiteri's signature to GC Exh. 9, a July 9, 2002 letter to the Union. His signature on that document was scribbled and illegible.

[5] GC Exhs. 10, 13.

[6] Tr. 184.

[7] R. at par. 3 of its answer, denied that the collective-bargaining unit described in the expired 2000 collective-bargaining agreement constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and that the Union was the designated exclusive collective-bargaining representative of said unit. GC Exh. 1(e). However, Respondent conceded that it recognized and dealt with the Union as the appropriate collective-bargaining unit and as the exclusive collective-bargaining representative. (Tr. 91.) As such, Respondent failed to met its burden of rebutting the presumption that the Union continued to enjoy the status of majority representative. *Stratford Visiting Nurses*, 264 NLRB 1026, 1027 (1982).

[8] GC Exh. 3.

[9] Campbell's version of the events was very credible and he had a specific recollection of his discussions with John Squiteri. Tr. 34–36. John Squiteri corroborated Campbell's version by conceding that Campbell called him in August or September 2002 "looking" for the me-too agreement and he told Campbell that he needed more time in order to give it to Steven Squiteri. Tr. 149, 153–154.

[10] GC Exh. 4.

[11] It is undisputed that Steven Squiteri's actual signature, as depicted on R. Exh. 3, is vastly different from the signature on GC Exh. 4. However, the scribbled and illegible signature on GC Exh. 4 bears a general resemblance to the one written by John Squiteri on GC Exhs. 9 and 10. Coupled with the fact that John Squiteri had the apparent au-

> The undersigned Employer hereby agrees to extend its current collective bargaining agreement with Local 813, IBT from December 1, 1999 through July 31, 2002.
>
> The undersigned Employer agrees to accept and adopt all terms and conditions contained in any successor collective bargaining agreement (replacing the agreement which expires July 31, 2002) negotiated between Local 813, IBT and Waste Management of New York or Allied Waste Industries, Inc. d/b/a Waste Services of NY, Inc., covering employees in the private sanitation industry in New York City once that successor agreement is negotiated.

In January 2003, Steven Squiteri asked Union Representative Sylvester Needham for the new contract. In February 2003, Steven Squiteri notified Campbell that he was succeeding John Squiteri as operations manager and again inquired as to the status of the new contract.[12] Campbell informed him that the contract would be ready within a few weeks. Steven Squiteri called Campbell again in March 2003 and asked when the contract would be ready. Again, Campbell assured him that the contract would be ready within several weeks, but also raised the matter of several employee grievances. They agreed to meet on April 1, 2003, at which time Campbell would deliver the new contract and they would discuss outstanding grievances.

At their meeting at the Respondent's office on April 1, 2003, Campbell presented two original sets of the new contract to Steven Squiteri for his signature. The new contract contained the same terms and conditions contained in the Waste Management Agreement. Steven Squiteri mentioned that there were several outstanding grievances. He refused to sign the new contract and advised Campbell to discuss the matters of the new contract and the grievances with the Respondent's attorney. On May 5, 2003, the parties met at the office of the Respondent's counsel. Steven Squiteri again refused to sign the new contract. He denied signing the me-too agreement and claimed that it was a forgery. The Respondent's counsel told the Union's counsel that the matter could be resolved if the Union were to give the Respondent "some relief on the pay wage for the helpers."[13] The Union's counsel declined to renegotiate the terms of the new contract and the meeting ended. To date, the Respondent has not signed a new contract.

Discussion and Analysis

The General Counsel contends that the Respondent has violated Section 8(a)(5) and (1) of the Act since April 1, 2003, by refusing to execute, as required by the me-too agreement executed on or about September 12, 2002, a new contract containing the same terms and conditions of the Waste Management Agreement. The Respondent contends that neither Steven Squiteri, nor anyone else authorized to execute a collective-bargaining agreement on behalf of the Respondent, signed the me-too agreement. Furthermore, even if it is determined that John Squiteri signed Steven Squiteri's name to the me-too agreement, the Respondent asserts that John Squiteri did not have the legal authority to bind the Respondent or otherwise act on behalf of Steven Squiteri. Finally, it is alleged that the me-too agreement does not constitute a "meeting of the minds" as required under Section 8(d) of the Act, since it purports to bind the Respondent to a future agreement reflecting the terms and conditions of either the Waste Management Agreement or the Waste Services Agreement. Accordingly, the Respondent further alleges that the me-too agreement, which is devoid of the precise terms to which the Respondent would be bound under the terms of a collective-bargaining agreement, is ambiguous and legally defective.

Section 8(d) of the Act requires execution of "a written contract incorporating any agreement reached if requested by either party" to a collective-bargaining relationship. *NLRB v. Strong*, 393 U.S. 357, 359 (1969); *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 525–526 (1941). This requirement also applies to individual employer members of multiemployer bargaining units, as well as nonmembers agreeing to be bound by the terms of a multiemployer agreement. *Buffalo Bituminous v. NLRB*, 564 F.2d 267 (8th Cir. 1977), enfg. 227 NLRB 99 (1977). Where there is an accord as to the material terms of a tentative agreement, a party's refusal to sign a contract or memorandum of an agreement embodying such terms constitutes a violation of Section 8(a)(5) and (1) of the Act. *Miron & Sons Laundry*, 338 NLRB No. 2, slip op. at 8 (2002); *Flying Dutchman Park, Inc.*, 329 NLRB 414, 422 (1999).

The General Counsel has the burden of showing that there was an agreement or "meeting of the minds" between the parties as to all substantive issues. *The Buschman Co.*, 334 NLRB 441, 442 (2001). In this case, there are two issues that must be addressed by the General Counsel in determining whether the parties entered into an enforceable agreement: (1) whether the me-too agreement was signed by John Squiteri or delivered to the Union by John Squiteri under circumstances indicating that he had the legal authority to bind the Respondent to such an agreement; and (2) if so, whether the me-too agreement was

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thority to sign Steven Squiteri's signature to GC Exh. 9, the credible evidence points to John Squiteri as the signatory of GC Exh. 4.

[12] Steven Squiteri testified that he only saw a proposed me-too agreement in February or March 2003. The credible evidence indicates otherwise. He knew that the parties had a longstanding practice of entering into me-too agreements. (Tr. 85, 109.) However, other than reflecting an agreement to be bound by the Union's agreement with another company, a me-too agreement does not contain any other significant information. Therefore, it is reasonable to assume that, when Steven Squiteri called the Union in January, February, and/or March 2003, asking for the new contract, he was interested in seeing a new contract reflecting the terms of the Waste Management Agreement or Waste Services Agreement. (Tr. 91, 112–113.)

[13] The credible evidence further indicates that Steven Squiteri's refusal to sign the new contract on either occasion was due to his irritation over the pending grievances and then the Union's refusal to renegotiate wages for the "helpers." Campbell's testimony in that regard was not refuted. (Tr. 44–47.) On the other hand, Steven Squiteri's explanation that the Respondent made a corporate decision not to execute the me-too agreement, due to a pending investigation by the City of New York's Business Integrity Commission, was refuted by the credible evidence. (Tr. 129–130.) First, there was no testimony that he raised such a concern during either meeting. Second, the investigation was resolved on March 1, 2003, well prior to the meeting, with the Respondent agreeing to disassociate itself from John Squiteri. Tr. 137; Stipulated Jt. Exh. 1–2.

sufficiently definite as to its terms or whether it was so ambiguous as to be illusory in nature.

The credible evidence indicates that John Squiteri, albeit unbeknown to the Union, signed Steven Squiteri's name to a me-too agreement stating that the Respondent "agrees to accept and adopt all terms and conditions contained in any successor collective-bargaining agreement" with either Waste Management or Waste Services. He authenticated two distinct examples of his handwriting, one of which bore a general resemblance to the scribbled and illegible signature on the me-too agreement. Accordingly, the trier of fact was entitled to find, based on a comparison of John Squiteri's signatures on the authenticated pieces of evidence to the signature on the questioned piece of evidence, that he signed the me-too agreement. S*ee United States v. Malloy*, 153 F.3d 724, 725 (4th Cir. 1998); see also Fed. R. Evid. 901(b)(3). The credible evidence also demonstrated that Steven Squiteri was aware that a me-too agreement had been signed when he called the Union in January 2003, and again in February or March 2003, asking for the new contract. On those occasions, he made no mention of his intent to negotiate the terms and conditions of a new contract and the parties had a longstanding practice of entering into me-too agreements. Furthermore, the Respondent is estopped from disavowing John Squiteri's apparent authority to execute the me-too agreement, since he was employed as the Respondent's operations manager and was permitted by the Respondent to deal with the Union in resolving labor grievances. Therefore, John Squiteri acted as the Respondent's agent within the meaning of Section 2(13) of the Act. *NLRB v. Donkin's Inn, Inc.*, 532 F.2d 138, 141 (9th Cir. 1976); *Mar-Jam Supply Co.*, 337 NLRB No. 337 (2001).

Even assuming, arguendo, that John Squiteri did not sign the me-too agreement, the credible evidence also indicates that he delivered the executed me-too agreement to Campbell. Since it undisputed that the Respondent permitted John Squiteri to accept and return me-too and other agreements on prior occasions, the Union reasonably believed that the Respondent had delegated the authority to John Squiteri, as its agent, to accept and return the executed me-too agreement to the Union. *NLRB v. Beckham, Inc.*, 564 F.2d 190, 194 (5th Cir. 1977).

Therefore, the first part of the test is met, as the evidence clearly establishes that the me-too agreement was signed by John Squiteri and delivered by him to Union Representative Campbell on or around September 9, 2002. Furthermore, either event—the signing or the delivery of the me-too agreement by John Squiteri—communicated a promise on the part of the Respondent to enter into an agreement containing the terms and conditions of either the Waste Management Agreement or the Waste Services Agreement. The only remaining question is whether the Respondent's promise was too ambiguous to constitute an enforceable agreement.

A contract is ambiguous if it is susceptible to two different interpretations, each of which is found to be consistent with the contract's language. *Sun Shipbuilding & Dry Dock Co. v. United* States, 393 F.2d 807, 815–816 (1968). Under the circumstances, the Respondent agreed to abide by the terms and conditions of either the Waste Management agreement or the Waste Services agreement. There was nothing ambiguous about the me-too agreement: The Respondent agreed to let the Union bind it to one or the other. The Respondent's promise is not illusory because an option was given to the Union. The Union's exercise of that option provided a means for determining the precise thing that the Respondent, as promisor, was to do. An agreement that gives a promisee an option to determine within specific limits, or as to a particular matter the performance which it wishes, does not fail for objectionable indefiniteness. 4 Williston on Contracts, § 4:25 (4th ed. 1991). Furthermore, certainty with regard to a promise does not have to be apparent from the promise itself, so long as the promise contains a reference to some document, transaction, or other extrinsic facts from which its meaning may be made clear. Id., § 4:27.

Me-too agreements enable independent, usually smaller, employers like the Respondent to obtain all the benefits of collective-bargaining agreements negotiated by the principal employers in their industry without having to participate in either industrywide negotiations or their own negotiations. In consideration for entering into a me-too agreement, which is generally devoid of the specific details of a collective-bargaining agreement, an independent employer is assured of being subjected to the same contract provisions that are applicable to its competitors and is saved the cost of expensive negotiations. As such, me-too agreements have long been recognized as valid collective-bargaining instruments. *Arizona Laborers, Teamsters and Cement Masons Trust Fund v. Conquer Cartage Co.*, 753 F.2d 1512, 1518 (9th Cir. 1985). Accordingly, the Respondent's execution of the me-too agreement and subsequent refusal to execute a new contract reflecting the Waste Management Agreement constitutes a violation of Section 8(a)(5) and (1) of the Act. *B & M Linen Corp.*, 338 NLRB No. 2, slip op. at 11–12 (2002).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all relevant times, the Union has been the exclusive collective-bargaining representative of the following employees of the Respondent in an appropriate bargaining unit within the meaning of Section 9(b) of the Act.

> All Chauffeurs, Helpers, Mechanics and Welders of the Employer, except those Employees not eligible for membership in the Union in accordance with the provisions of the Labor Management Relations Act of 1947, as amended, with respect to wages, hours and other working conditions. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products

4. By failing and refusing to execute a collective-bargaining agreement incorporating all of the terms and conditions in the collective-bargaining agreement entered into between Local 813, International Brotherhood of Teamsters, AFL–CIO and Waste Management of New York on October 30, 2002, thereby replacing the agreement which expired on July 31, 2002, the Respondent has failed to fulfill its statutory obligations and

thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist from its unlawful conduct in refusing to execute the new contract and to take certain affirmative action designed to effectuate the policies of the Act.[14] Specifically, the Respondent shall be ordered to execute and implement the collective-bargaining agreement delivered to it by the Union on April 1, 2003, to give retroactive effect to its terms and conditions of employment to August 1, 2002, and to make unit employees whole for any losses they may have suffered as a result of the Respondent's unlawful refusal to execute the new contract. See *Gadsen Tool, Inc.*, 327 NLRB 164 (1998). Backpay shall be computed in accord with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971); and *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Sanitation Salvage Corporation, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to execute a collective-bargaining agreement replacing the agreement which expired on July 31, 2002, incorporating all of the terms and conditions in the collective-bargaining agreement entered into between Local 813, International Brotherhood of Teamsters, AFL-CIO, and Waste Management of New York on October 30, 2002.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. ake the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the collective-bargaining agreement, delivered to the Respondent on April 1, 2003, incorporating all of the terms and conditions in the collective-bargaining agreement entered into between Local 813, International Brotherhood of Teamsters, AFL–CIO, and Waste Management of New York on October 30, 2002; give retroactive effect to its terms and conditions of employment to August 1, 2002; and make employees whole, with interest, for any losses they may have suffered as a result of the Respondent's refusal to execute the agreement.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days of service by the Region, post at its Bronx, New York facility copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous place, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 8, 2004

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to execute the collective-bargaining agreement delivered to us by the Union on April 1, 2003, replacing the agreement that expired on July 31, 2002, which will incorporate all of the terms and conditions in the collective-bargaining agreement entered into between Local 813, Interna-

[14] Notwithstanding the GC request, at p. 13 of its br., for a remedy requiring Respondent to execute a new contract incorporating the terms and conditions in the Waste Management agreement or the Waste Services agreement, the Order shall specifically require Respondent to execute the Waste Management agreement. The findings of fact and conclusions of law do not support any other type of remedy, including one that provides Respondent with a choice at this point.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tional Brotherhood of Teamsters, AFL–CIO, and Waste Management of New York on October 30, 2002.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL execute the collective-bargaining agreement delivered to us by the Union on April 1, 2003, and WE WILL give retroactive effect to the terms and conditions of employment contained in said agreement.

WE WILL make our employees whole, with interest, for any losses they may have suffered as a result of our refusal to execute the agreement.

SANITATION SALVAGE CORPORATION